

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

JASON ANDREW DUNN,

PLAINTIFF

V.

NO: 4:06CV35-D-B

**JOHN DEAR, CHARLES HAND, "UNKNOWN WILLIS,
"UNKNOWN" WESTMOORELAND, "UNKNOWN" WALKER,
LINDSEY MEEKS & JOHN DOES 1-4,**

DEFENDANTS

REPORT AND RECOMMENDATION

On August 16, 2006, the *pro se* plaintiff, Jason Andrew Dunn, appeared before the undersigned United States Magistrate Judge for a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985), to determine if there exists a justiciable basis for his claim filed pursuant to 42 U.S.C. §1983. An *in forma pauperis* complaint may be dismissed if it is determined that the allegation of poverty is untrue, or if the action or appeal is frivolous, malicious, fails to state a claim for which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2).

Plaintiff is a state inmate currently confined at the Mississippi State Penitentiary in Parchman, Mississippi. His Complaint, filed February 27, 2006, alleges he was assaulted by corrections officers on October 18, 2005.

At the *Spears* hearing, plaintiff made an oral motion on the record to dismiss his Complaint. Based on the foregoing, it is my recommendation that plaintiff's motion be granted and that the Complaint be dismissed without prejudice pursuant to Rule 41(a)(2) of the *Federal Rules of Civil Procedure*.

The parties are referred to Local Rule 72.2(D) for the applicable procedure in the event any party desires to file objections to the findings and recommendations herein contained. The parties are warned that any such objections are required to be in writing and must be filed within ten days of this date. Failure to timely file written objections to the proposed findings, conclusions and recommendations contained in this report will bar an aggrieved party, except upon grounds of plain error, from attacking on appeal unobjected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Respectfully submitted this, the 16th day of August, 2006.

/s/ Eugene M. Bogen
UNITED STATES MAGISTRATE JUDGE